UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	**CASE NO: 2:13-CV-00193**
	)	
Plaintiffs,	)	**CIVIL**
	)	
vs.	)	**Corpus Christi, Texas**
	)	
RICK PERRY, ET AL.,	)	**Thursday, July 24, 2014**
	)	
Defendants.	)	**(9:00 a.m. to 10:19 a.m.)**

STATUS CONFERENCE (TELEPHONIC)

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	**See Next Page**
Court Recorder:	**Genay Rogan**
Clerk:	**Brandy Cortez**
Court Security Officer:	**Adolph Castillo**
Transcriber:	**Exceptional Reporting Services, Inc.** **P.O. Box 18668** **Corpus Christi, TX 78480-8668** **361 949-2988**

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Corpus Christi, Texas; Thursday, July 24, 2014; 9:00 a.m.

(Call to Order)

THE COURT: Okay. The Court calls Cause Number 2-13-193, *Veasey, et al., versus Perry, et al.*

THE CLERK: And, your Honor, for the individual Veaseys, we have Mr. Dunn and Mr. Derfner on the line.

For the United States of America, we have Anna Baldwin and Bradley Heard on the line.

For the Mexican American Legislative Caucus, Mr. Rosenberg.

For Ortiz, et al., Mr. Doggett and Ms. Van Dalen.

For the Association of Hispanic County Judges, Mr. Rios.

For the Texas League of Young Voters, Ms. Korgaonkar and Mr. Dunbar.

For the State of Texas present in the courtroom, we have Mr. Scott, Mr. Clay, and Mr. Crawford; and then on the line, we have Ms. Wolf, Mr. Donnell, and Mr. D'Andrea.

THE COURT: All right. There's various matters pending before the Court. We haven't really reconvened, I guess, in about a month.

So the first thing I'd like to take up is Docket Entry Number 276, which is the United States' Motion for a Protective Order from the Defendants' Rule 30(b)(6) Notice of Deposition.

Let's see. The parties had been conferring for some time on that Motion. The Court heard argument the last time we convened. The parties provided further briefing on that Motion, so I'm ready to make some rulings.

Regarding Topic 1, which was the administrative preclearance of the law of any state, et cetera, since 2004, the Court is going to sustain the objection, finding that request is overly broad and burdensome regarding any state laws and any laws, basically -- not just those that might have some relation to the subject matter of this suit.

And the Court also finds that why some cases were prosecuted and others were not are not relevant or reasonably calculated to lead to the admissible evidence for the issue that is before this Court.

And then to the extent that the -- we're dealing with preclearance as a remedy, I believe that would be per a separate phase, if liability is established.

Anything else on that topic?

MS. BALDWIN: No, your Honor. Not for the United States.

THE COURT: Okay. Then Topic 2, the enforcement of Section 2.

The Court is going to sustain the objection also, finding that comparing prosecutions among the states is not relevant for purposes of the issue before this Court.

Now, there's been some matters produced under that; is that correct, Ms. Westfall -- I mean, I'm sorry -- Ms. Baldwin?

MS. BALDWIN: Your Honor, we've produced, you know, documents that have been requested.

THE COURT: Yeah, and I think the --

MS. BALDWIN: And --

THE COURT: -- documents should be --

MS. BALDWIN: And they're, of course, publically available documents. You know, the cases that have been litigated under the Voting Rights Act are, you know, (indiscernible).

THE COURT: All right.

MS. BALDWIN: But --

THE COURT: Anything further on topic two?

MS. BALDWIN: Not from the United States, your Honor.

THE COURT: Topics 5 and 6, I'm going to sustain those objections against that -- again, that looks to appear to go toward remedial phase, if any -- if we get there.

Any questions on that?

MS. BALDWIN: No, your Honor.

THE COURT: Okay. Topic 10, there's a little bit of clarification I think that needs to be -- it looks like the State is saying we need some clarification what exactly was produced -- not just voter impersonation information, but all

Texas voter complaints.

What was produced, Ms. Baldwin?

MS. BALDWIN: Yes, your Honor. In our Reply, on Page 6, Footnote 3 goes through the search terms that were used in the category, so, you know -- explaining, for example, that VotingSection@USDOJ.gov was searched from 2009 to 2014 using the search term "fraud," and all documents related to voter fraud in Texas to and from this e-mail address were produced.

And had the search turned up any documents related to in-person voter impersonation fraud nationwide, those documents would have been produced, but there were none.

The same e-mail address was also searched using relevant Texas photo voter ID bill numbers, and Section 5 submission numbers for documents relating to voter ID bills in Texas. And the Voting Section reviewed files from this e-mail correspondence from 2004 to 2014 by hand to search for all documents related to voter fraud in Texas, which were produced --

THE COURT: I guess I had a --

MS. BALDWIN: -- as well as (indiscernible) documents for voter impersonation fraud nationwide, which yielded no responsive documents.

THE COURT: I had a question on that footnote, because it says, "All documents related to voter fraud in Texas," then it goes on, "If the search had turned up any

documents related to in-person voter impersonation fraud nationwide, those documents would have been produced."

MS. BALDWIN: Yes, ma'am.

THE COURT: So you all did a nationwide search?

MS. BALDWIN: Yes, so we searched comprehensively the -- for example, the paper files and the e-mail addresses nationwide. And anything that would have hit, for example, the word "fraud" related to Texas was produced, even if it didn't appear to be an allegation that was related to in-person voter impersonation at the polls in Texas.

For nationwide, if, for example, in another state the word "fraud" hit an e-mail, if that e-mail didn't have anything to do with in-person voter impersonation at the polls, that was not produced, because it was not relevant.

THE COURT: Mr. Clay?

MS. WOLF: Your Honor, this is Lindsey Wolf.

THE COURT: All right.

MS. WOLF: I'd just like for the Government -- I mean, I think we have some serious concerns with the documents that were produced by the United States, or not produced by the United States, relating to voter fraud.

And I think what I heard Ms. Baldwin just say was that while documents for voter fraud may have been searched -- and I'm only talking about within the (indiscernible) 1973(c) address -- they were only produced if they were relating to in-

person voter fraud, and I don't think that the Defendants have ever sought only documents relating to in-person voter fraud, and, you know, limited to that universe.

And I just -- and on top of that, we learned in a conference call with the United States -- and I think this is more relevant to Topics 7, 8, 11 through 30, and 37 -- but that no documents in the Public Integrity Section, which is the section which deals with voter fraud and prosecutes voter fraud, have been searched or produced to us at all.

And so I think we're dealing with a very limited search range. And so to say that there aren't any documents, when, in fact, the right repositories for documents have not been searched --

THE COURT: Okay. And let me --

MS. WOLF: -- (indiscernible).

THE COURT: -- backtrack a little bit. This is for a deposition. I guess -- and I think my point on some of this is I don't know that it's appropriate for a deposition. If some documents have been turned over, these might be some records, facts, you know, historical data -- I think the records are what they are, and you don't necessarily need a deposition for that.

But I -- we're kind of going off a little bit into what records have been produced versus -- I know what's before the Court is the deposition, the 30(b)(6) deposition.

But I guess, Ms. Baldwin, if the Defense had asked for not just in-person voter impersonation, but just fraud generally, why -- why was that a problem to be able to --

MS. BALDWIN: Well --

THE COURT: -- produce that?

MS. BALDWIN: -- related to the State of Texas, we did produce that, your Honor.

It's our position that any complaint related to totally unrelated kinds of fraud anywhere in the nation has nothing to do with whether SB 14 had a racially discriminatory purpose or effect in this case.

And just to briefly respond to Ms. Wolf's point about the Public Integrity Section, while we didn't search individual, you know, e-mail account users in the Public Integrity Section, as we've explained in the Declaration of Richard Pilger, there's no discoverable information to be found there.

There are no prosecutions that the Public Integrity Section or any U.S. Attorney's Office, any Department of Justice attorney anywhere in the country has done for in-person voter impersonation fraud at any time from 2004 to the present.

So searching for documents related to allegations that have never come to fruition, there's just -- there's no there there. There is no reason to have done a more thorough search.

And at any rate, you know, we are just talking about depositions.

These Document Requests were served long, long ago. The Defendants -- we've continually told them what -- what it is that we've searched for. You know, we're weeks from trial.

The United States stands by the fairness and reasonableness of its, you know, search and the production in this case.

THE COURT: Okay. Regarding Topic 10, for a deposition, I think it would be appropriate for the Defense to inquire as to how those records that are discussed there in 10, how they're maintained, how they were searched, to be able to respond to the discovery request.

But I don't think beyond that -- I mean, they are what they are.

So I guess sustained in part, overruled in part.

Yeah. Any questions on that?

MS. BALDWIN: Your Honor, could you state what it is that you're finding to be the topic --

THE COURT: On Topic --

MS. BALDWIN: -- (indiscernible)?

THE COURT: -- 10?

MS. BALDWIN: Yes, ma'am.

THE COURT: It's what you all set forth, the phone logs, the ICM system e-mail communications --

MS. BALDWIN: So the topic would be how the United States searched the items for production in this case, your Honor?

THE COURT: Yeah, how those records are maintained. The Defense asked for records -- or those records, how the Government searched to be able to respond to that discovery request.

And you all may have exchanged this information already, but I think that would be appropriate, those parameters, for a deposition; but not into the subject matter themselves about these records.

I mean, these are kind of, like, records, facts, and I guess some historical data, that I don't think is appropriate for deposition.

MS. BALDWIN: Okay, your Honor. Thank you for that clarification.

THE COURT: Is that clear to the Defense?

MS. WOLF: Yes, your Honor.

THE COURT: Okay. So shall we move, then -- I'm looking at -- I may have taken 10 out of order -- looking at Topics 7 and 8.

I think -- I'm viewing that pretty much the same way as 10. The Defense could inquire as to how those records are maintained, how they're used to compile reports, how they were searched -- how those records are searched to be able to

compile these reports, but you -- the Defense -- the deposition doesn't go into the substance of any of the matters reported or excluded.

Does that make sense?

MS. WOLF: Your Honor, for the Defendants, just a question in terms -- because I think there's a little bit of grey area between --

THE COURT: Uh-huh.

MS. WOLF: -- substance and compilation.

Part of our objection to -- or questions regarding the Ballot Access and Voting Integrity Initiative Reports and the Public Integrity Reports is that there's a lot of summary information in there, and we don't know how that summary information was gathered, or how it was accumulated, or what data was relied upon in coming to those summaries.

For example, there's -- in the Ballot Access Reports, there's summary specifics regarding election fraud --

THE COURT: I think --

MS. WOLF: -- and would that be something that we would be entitled to inquire as to what the sources were for those summaries, and what was searched in terms of the report itself?

THE COURT: Yes. Okay. Any other questions?

(No audible response)

Okay. Then I'm moving on to 11 through 30.

So let me just -- and I read through this, but -- so the United States has produced some factual information regarding these election crimes and voter fraud, correct, Ms. Baldwin?

MS. BALDWIN: Yes, your Honor. To the extent that it was possessed by the Voting Section, we produced --

THE COURT: Okay. So what's --

MS. BALDWIN: -- (indiscernible) --

THE COURT: -- the issue from the Defense? I mean, I would think that the United States saying, "Here, this is what we have," why is that not sufficient?

MS. WOLF: Your Honor, it's not -- it's not sufficient because it -- they're basically searching in the wrong repository. It would -- it would be as if they were searching a civil docket for a criminal indictment.

They're looking in the Voting Section, and they've represented that, and we just know from publically available information that it's the Public Integrity Section of the Department of Justice which handles the voter fraud and election crimes.

And I think our intention is to move to compel those documents, because, frankly, we weren't fully aware of the limits of the United States' search in not searching the Public Integrity Section until the call that we had with the United States earlier this month.

And so now we're in a position where we don't have any documents from the Public Integrity Section, and I understand that an individual from the Public Integrity Section provided a Declaration in connection with the United States' Reply to our Response to the Motion; however, the Declaration is very general. And, again, it only concerns in-person voter impersonation. And we've never limited our discovery requests only in that manner. And we've been asking consistently in depositions -- and for documents relating to voter fraud generally and election crimes generally.

And, basically, it's a self-imposed limitation that the United States has imposed on us without us asking or agreeing to that particular limitation.

I think the United States' basis, for example, for not searching the documents relating to voter fraud in the Public Integrity Section was based on some earlier discussions regarding the definition of "you" and "your" in a -- in a Request for Production that didn't even concern voter fraud.

And, you know, we just learned that they decided, you know, to basically limit their searches in that way going forward, and we had never agreed to that.

So I think that the -- the Defendants are in a position where we just don't have enough information. We don't have information from the right source. We're not (indiscernible) a witness. We're not being given documents.

And I think that the stated purpose of SB 14, which we've said in our, you know, in our counter (indiscernible) and -- or, I'm sorry -- in our Answer, and we've also said it -- you know, it's also been asserted in the United States' Complaint itself is the integrity of elections. And the integrity of elections is broader than in-person voter impersonation. It goes to broader issues of fraud and (indiscernible) that just, you know, fraud nationwide is relevant in that the Texas Legislature has responded to allegations of fraud in the past nationwide, and I think that this particular topic area is relevant, and it's just not fair the way that we've been denied access to this information --

THE COURT: Okay. And --

MS. WOLF: -- in a very (indiscernible) --

THE COURT: And let me just butt in. I think we talking again about more production of documents versus the appropriateness for a deposition.

I think this kind of falls back in line with the other rulings I've already made.

I can, again, see how there might be some questioning on how the records were maintained, how they were searched for inclusion in and for compilation of the reports; but, beyond that, I don't know that it's appropriate for deposition.

Ms. Baldwin, do you want to respond to the argument by the Defense regarding what's been produced?

MS. BALDWIN: Yes, your Honor. I mean, as the Declaration from Richard Pilger, who's the director of the Elections Crime Branch in the Public Integrity Section, makes clear, there is nothing to produce related to in-person voter impersonation.

THE COURT: Okay. But they're not just --

MS. BALDWIN: (Indiscernible) --

THE COURT: -- limiting it to in-person issues.

MS. BALDWIN: Your Honor, and we would respectfully state that that is the only information that's relevant here. The bill sponsors of SB 14 have repeatedly testified, up to and including yesterday, that the purpose of SB 14 was to stop in-person voter impersonation.

There's -- any kind of election crimes that the Department enforces anywhere in the nation is simply not relevant to the purpose and effect of SB 14.

MR. CLAY: Your Honor --

MS. BALDWIN: And --

MR. CLAY: -- this is Reed Clay for the State of Texas.

Even in deposition testimony yesterday, although in-person voter fraud is, according to the testimony of Senator Fraser, was one of the stated purposes of SB 14, the other stated purposes and the more broad purpose was the -- to ensure the integrity of Texas elections.

More problematic, from Ms. Baldwin's perspective, is the language in *Crawford* that's sustained Indiana's voter ID law looks specifically to not only election crimes -- not only election crimes that weren't in-person voter fraud, but election crimes that weren't in-person voter fraud that occurred outside of Indiana.

So they're trying to exclude a broad base of evidence that could be used to support and sustain Texas's voter ID law.

THE COURT: Yeah, I think the Government -- the United States is looking at this too narrowly.

So I'm sustaining, I guess, the Defendants' -- well, it's the United States' --

MS. BALDWIN: Your Honor --

THE COURT: -- Protective Order. We're getting a little confused here, because we're talking about records. But this is a Protective Order regarding a deposition.

I'm going to allow the Defense to look further than -- or to ask for documents beyond just the in-person voter fraud.

But that's still -- I mean, we need to go back and address this issue of the deposition. I -- that's just going to records. I don't know that a deposition regarding the substance of those records themselves is appropriate, which --

MS. BALDWIN: Your Honor, the deposition would raise, you know, many governmental privileges about investigations

that are ongoing --

THE COURT: Well, didn't I just say we're not going to get into the subject matter in a deposition?

MS. BALDWIN: Okay. Thank you, your Honor. I'm just understanding -- so there will be no deposition on Topics 11 through 30, if I'm understanding?

THE COURT: I think it would be appropriate, if there's questions regarding how those records are maintained and searched for inclusion into whatever reports are being produced, would be appropriate, which kind of goes back in line with my other rulings.

But beyond that, and to any substance of what -- of the records or -- no, that would not be appropriate.

MS. BALDWIN: Okay. Okay. Your Honor, so just, again, I'm just trying to make sure that I understand.

The records that are compelled -- compiled by the Public Integrity Section are the records that the Public Integrity Reports that are submitted to Congress that are the topic of matters that -- that the Court has already ruled on.

So I'm just trying to understand -- my understanding of your ruling is that you're not adding anything additionally in these topics. This topic is already set, because you've already made a ruling on --

MR. SPEAKER: And --

MS. WOLF: Your Honor, I would just interject that I

believe that the Declaration submitted by the Public Integrity Section itself actually refers to records beyond those Public Integrity Reports, so I would just like to refer the Court to that, because I don't think (indiscernible) universe.

MS. BALDWIN: Well, the records that it refers to is a public document that's attached that talks about the way in which investigations are to be reported to the Public Integrity Section, and that no such investigations have been reported to the Public Integrity Section related to in-person voter impersonation anywhere in the country.

MS. WOLF: I would just argue -- I mean, I think it refers to the Legal Information Office Network System, and I think it refers to the Automated Case Tracking System. I think there are two systems that DOJ (indiscernible) --

THE COURT: I'm sorry. I'm not catching any --

MS. WOLF: -- that are referred to --

THE COURT: I'm sorry. I'm not catching any of that. If you can kind of backtrack, slow down.

Some of you come in very soft. We have to pick up the volume. Some of you come in very loud. And whether you come in soft or loud, it's kind of hard to hear on this end. We have to adjust that.

So if you can just repeat that?

You need some help?

THE CLERK: Yeah, if we can ask them to --

THE COURT: I --

THE CLERK: -- identify themselves -- if you'd please identify yourselves each time you speak, it would help.

MS. WOLF: Sure. I'm sorry. This is Lindsey Wolf for the Defendants.

THE COURT: Okay. If you want to repeat what you said?

MS. WOLF: Sure, your Honor.

I was just referring to the Declaration of Mr. Pilger, who's the director of the Election Crimes Branch of the Public Integrity Section. And I think what Ms. Baldwin had just told the Court was that the only records were the Public Integrity Reports.

However, if you look at the Declaration, Mr. Pilger is referencing his review of an automatic case -- Automated Case Tracking System, a Legal Information Office Network System, which is managed by the Executive Office for the United States Attorney of the DOJ.

And so I don't think that the limited universe is the Public Integrity Reports. I think there are records -- case tracking records that DOJ maintains that allow it to keep this sort of case data.

And so I would argue that it's not just limited to topic -- I believe it's 7 and 8.

THE COURT: Ms. Baldwin?

MS. BALDWIN: Your Honor, the topics that we're talking about are that Texas's notice -- they're asking about instances of election crime. They haven't noticed topics related to the internal software that the Public Integrity Section uses.

On the substance of the -- these prosecutions, they're publically available documents where there have been prosecutions, where there have been investigations. To get into that raises an inordinate number of government privileges, and it's just not relevant.

So we believe that the information that's relevant has been -- already been presented in the form of the Declaration and that there is no further information that is needed to discover.

I understand the Court's ruling on the publically available reports that the Public Integrity Section compiles, and the United States will work to comply with that ruling.

There's nothing further on these topics as the Defendants have drafted (indiscernible) --

MS. WOLF: And, again, your Honor, I would just respectfully, you know, point out that, again, the Declaration and the searches that are referred to in the Declaration are only limited to in-person voter impersonation.

And my understanding of your Honor's statement a couple of minutes ago was that that is too narrow.

So even standing on the legs of the Declaration alone, the Declaration is too limited.

THE COURT: All right. Ms. Baldwin, well, you understand my ruling. The Court has expanded what the Government is saying was relevant, correct?

MS. BALDWIN: I understand that ruling, your Honor. But just in terms of complying with what it is that we're expected to have a deponent on, I'm not -- if you've ruled on Topics 11 through 30, I'm not understanding what the scope of that ruling is.

THE COURT: What I said was -- I think I started out by asking -- the Government has produced some matters, and then we got off on whether it was just regarding the in-person voter fraud, impersonation, or, as the Defense is requesting, more than that -- other allegations of fraud.

So we got off talking about that.

And then I said any reports, any compilation, any things of that nature, again, I don't think is appropriate to have to produce someone to testify regarding the substance matters -- substance matters of those reports, compilations, records, whatever it may be. But they can be questioned about how those records are maintained, how they're searched, so that -- to compile the reports.

MS. BALDWIN: Okay. Again, reports of any kind of election law criminality, any kind of tracking system, any --

this just seems very broad, and I'm not --

THE COURT: Well, I don't think --

MS. BALDWIN: I (indiscernible) --

THE COURT: -- they're making it -- the Government -- the United States wants to limit it to in-person voter impersonation, or in-person voter fraud. It's not going to be limited to that.

I think the Defense has asked for -- and I'll have to go back and look at exactly what -- or, Ms. Wolf, do you want to address that?

MS. WOLF: Sure, your Honor.

I mean, we've asked for -- in terms of deposition topics relating to election crimes and voter fraud, and we've defined voter fraud in the 30(b)(6) notice to include fraudulent or deceptive acts committed to influence the act of voting, including both criminal and civil offenses in violation, and then -- and I'm happy to go over them for the record, but there are 11 sort of subcategories within the definition of voter fraud that we've asked for on top of that.

In addition to that, we've also defined election crime in the notice as an intentional act or willful failure to act prohibited by state of federal law that is designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible

votes not to be cast or counted, or other interference with or invalidation of election results, and that includes any criminal form of voter fraud as also defined.

And I would just note that those definitions were drawn directly from a report by the Election Assistance Commission.

THE COURT: Okay. And I think, again, we're going back to documents that have been requested and produced, and I am sustaining this Motion for Protective Order regarding the deposition -- Rule 30(b)(6) deposition as to any substance, subject matter of what's in the documents that have been produced other than -- I mean, I know we can get into some grey areas, but I really don't know how else to say this other than how I've presented it.

And we're going off onto what documents have been requested, what has been produced, what should have been produced, or the parameters of that. And that's kind of outside of this Rule 30(b)(6) notice.

MS. WOLF: Your Honor, this is Lindsey Wolf for the Defendant.

Just as sort of a clarifying question, would the Defendants be entitled to ask as to generally what happens when the Public Integrity Section prosecutes a voter fraud crime, or how they determine which voter fraud crimes they've prosecuted in the past --

THE COURT: No. No.

MS. WOLF: -- or those sorts of general questions?

THE COURT: No, that would not be appropriate.

MS. BALDWIN: So, your Honor, if I understand, then, to sum up, what the Court is requesting is that the Department produce a deponent about recordkeeping related to election crimes that have been prosecuted by the Department of Justice?

THE COURT: I agree with that. Ms. Wolf?

MS. BALDWIN: Okay.

MS. WOLF: And, your Honor, I would just ask would we be entitled to the type of information that's in Mr. Pilger's Declaration as to broader -- to things broader than in-person voter impersonation -- for example, how many have shown up in the database -- and to inquire at a deposition as to that?

THE COURT: I'm sorry. I didn't catch that.

MS. WOLF: Sure. So Mr. Pilger's Declaration is limited to talking about he searched records and he only -- then he determined that there were no records of in-person voter impersonation.

Since your Honor has -- I think has said that we -- you know, we would be entitled to a topic area broader than that, would we be able to inquire of a witness generally as to whether in those records there were instances of election crime, what the numbers of those instances were, in a deposition?

And I understand there's some separate issues with documents which we can address with a Motion to Compel, but this is just related to depositions.

MS. BALDWIN: Your Honor --

THE COURT: I think that would be appropriate.

Ms. Baldwin?

MS. BALDWIN: Your Honor, that's getting substantive in terms of, you know, how many investigations, what sort of investigations --

THE COURT: But isn't --

MS. BALDWIN: -- (indiscernible) --

THE COURT: -- that what the records are going to show?

MS. BALDWIN: Well, I understood the Court to be about how these records are organized. Again, to get into the substance of how many investigations there have been, the results, that's very substantive and it's likely to involve --

THE COURT: But --

MS. BALDWIN: -- (indiscernible) --

THE COURT: -- that's just going to be what the records are showing, right?

MS. BALDWIN: (Indiscernible) --

THE COURT: To that extent, I don't have a problem with that.

MS. BALDWIN: -- privileged records, your Honor. To

the extent that these are not public prosecutions, those records -- the substance of those records would likely, in fact, be privileged.

THE COURT: I thought she said about the number, not the substance and what they involved.

That was the way I understood what Ms. Wolf said.

MS. WOLF: Yes, your Honor. This is Ms. Wolf. That --

THE COURT: Okay.

MS. WOLF: That was my question.

MS. BALDWIN: Again, your Honor, and even talking about beyond recordkeeping when the Defendants -- they don't even list specific crimes. They say any crime under federal or state election law. To come up with tallies of those, I have no idea not only, again, of the relevance -- which the United States respectfully, you know, continues to press that to be asking about campaign finance crimes, which are included in what the, you know, Department does and what the Public Integrity Section does, that, you know, double voting, absentee ballot fraud -- these are all -- none of this is defined.

I don't know how to even prepare a deponent to be able to testify to the exact numbers of crimes that the Defendants haven't bothered to even define what are relevant. They just say anything under state or federal law that could affect --

THE COURT: Okay. But --

MS. BALDWIN: -- (indiscernible) --

THE COURT: -- normally the way this would work is documents would be produced, and then that deponent would talk about what I've discussed about the records.

Isn't that the way this works?

MS. BALDWIN: Even if, your Honor --

THE COURT: No?

MS. BALDWIN: The -- we're at an odd juncture here, where there is no Motion to Compel. The United States is standing by --

THE COURT: Okay. Well, just with the records that have been produced at this point.

MS. BALDWIN: Okay. Then --

THE COURT: I mean --

MS. BALDWIN: -- (indiscernible) can, you know, be prepared to talk about the records that have been produced at this point, your Honor. I understand that ruling.

THE COURT: Well, I -- like I said, we're -- this conversation is getting a little tricky, because we're here on the Motion for Protective Order on a 30(b)(6) depo, but we're also then talking about documents that have been produced and what one side wanted produced, what the other side thinks should be produced.

So that's, I think, why we're having some problems

here.

MR. SCOTT: And --

THE COURT: Mr. Scott?

MS. BALDWIN: And, your Honor, the Defendants have had the United States' documents on fraud. Those were produced on May 15th.

So it's very late for the Defendants to be threatening to file some Motion to Compel, where we're here at the end of July --

THE COURT: Well, I'm not addressing that. I opened probably this area up, because I was just trying to clarify a little bit what would be appropriate for the deponent to testify about.

MR. SCOTT: And, your Honor, it's my understanding that we would be able to -- at least be able to quantify as a result of these depositions what the universe of documents are and where those documents would be located, not any substance within those documents. But that -- then we would be able to look back at our Document Request and know whether they have, in fact, produced all of those documents or not.

We've got a control in place, if I'm understanding the Court right?

THE COURT: Correct.

MR. SCOTT: Okay. Thank you, your Honor.

THE COURT: Okay. Anything else on that issue?

MS. SPEAKER: No, your Honor.

THE COURT: Okay. Then we're moving to 37. And it appears the Government is saying there is nothing. What has been requested does not exist.

Is that correct, Ms. Baldwin?

MS. BALDWIN: Your Honor, yes. To the extent that we're talking about --

THE COURT: I'm showing calculation reports, audits relating to the effect of photo ID laws is the way I read that.

MS. BALDWIN: Right, to the extent that those aren't, you know, expert reports in litigation, that's correct, your Honor. If they, you know, existed, they would have already been produced. There's nothing more.

THE COURT: Okay. So what does the Defense want? If they've told you, "We don't have those," what's the deal here?

MS. WOLF: Your Honor, I think that it -- just in the theme of being able to get sworn testimony from a witness saying that they don't do or maintain those particular studies is all we want on that topic, if they don't exist.

So it would literally be a one -- you know, a couple questions, just do they exist --

THE COURT: I don't --

MS. WOLF: -- or not.

THE COURT: -- think that's necessary. If the lawyer is making a representation that that has not been done and that

does not exist, that is sufficient.

That was it, I believe, because you all did have some agreements on the rest of that Motion for Protective Order, correct?

MS. WOLF: Your Honor, this is Lindsey Wolf.

I think we haven't actually had a chance to firm those up. But, yes, we've discussed trying to come to, I believe, stipulations to deal with those. So those, apparently, aren't before the Court.

THE COURT: So nothing else on DE 276 before the Court.

Then we had the issue regarding Coby Shorter's deposition, DE 335. That was the Secretary of State's Motion for a Protective Order regarding that deposition. I know you all had been conferring --

MR. CLAY: Your Honor, I think that -- and Ms. Baldwin can correct me if I'm wrong -- but I think that we've reached an agreement on how to proceed with that, and that would moot out that Motion.

THE COURT: All right. Ms. Baldwin?

MS. BALDWIN: Yes, your Honor. This is Ms. Baldwin. That's correct.

THE COURT: Okay. Then we have the United States' Motion for Protective Order from the Defendants' Rule 30(b)(6) Deposition Notice to the DOJ's Office of the Inspector General.

I don't know if you all have conferred on that or where we are.

MR. HEARD: Yes, your Honor. Good morning. This is Bradley Heard for the United States.

THE COURT: Okay.

MR. HEARD: We had -- we have not conferred further, to my knowledge, on the Motion subsequent to our filing of the Motion. It was --

THE COURT: Well, let me just --

MR. HEARD: -- (indiscernible) and pending before the Court --

THE COURT: Okay. Let me just ask --

MR. HEARD: -- (indiscernible) --

THE COURT: -- are the findings in there disputed in that report that's at issue?

MR. HEARD: I'm sorry, your Honor? I didn't hear the question.

THE COURT: Are the findings in that report disputed?

MR. HEARD: Well, the findings are -- not from the perspective of the United States, your Honor. And our position is the findings in the OIG report are not relevant to any issue in this -- in this case, in any event.

THE COURT: I just -- I mean, the report --

MR. HEARD: I think --

THE COURT: -- says what it says. So I'm not -- let

me go back and look at that --

MR. HEARD: And they do have the --

THE COURT: -- report --

MR. HEARD: -- report, your Honor, because it's publically available.

THE COURT: So what does the Defense need?

MS. WOLF: Your Honor, there's a couple of points.

The first is the -- we moved for judicial notice of those reports, and that request was not granted. And I understand the Court didn't grant it without -- I'm sorry -- without prejudice so that we could raise it at a later date as to certain portions of that report.

I also think that the report itself is a summary of various interviews, and e-mail correspondence, and several different forms of documentation that the OIG reviewed in order to draft the report. And Defendants believe that they are entitled to inquire as to a witness as to what went into that report.

On top of that, that report is a centerpiece of the affirmative defenses and allegations that the Defendants have now asserted in the Answers that were filed a month ago, I believe. And we think that it's relevant, because we should be able to inquire as to, you know, the report since it is -- it is a main component of the affirmative allegations that we've asserted.

THE COURT: Ms. -- Mr. Heard?

MR. HEARD: Your Honor, as we argued in the motion, first, discovery happens by (indiscernible) relevance relating to claims and defenses that are asserted in the litigation. They're -- the defendants' 11 pages of so-called affirmative allegations and defenses doesn't change our original argument that they're -- that the OIG report is not relevant to any claim or defense even now, after the 11 pages, simply because the 11 pages do not come close to stating a dismissible counterclaim against the United States, nor do they state any affirmative defense that would be available to a Section 2 claim, as has been alleged in this -- in this case. Therefore, there is still the basic question of relevance of the DOJ report. As the Court indicated, the DOJ report is published; it is already available to the defendants; it speaks for itself; it says what it says. So, the 11 pages of so-called affirmative allegations and defenses is exactly the kind of material, your Honor, that would be subject to the motion to strike under Rule 12(f) because it is immaterial and impertinent to any issue in the case.

Texas attempts to -- to bring in the department's alleged lawlessness in enforcing the Voting Rights Act and make it somehow germane to this lawsuit because the Government and the private plaintiffs have requested bail-in relief under Section 3(c). But, as the Court was discussing earlier, bail-

in is simply a remedial element of relief. It is -- it is more properly dealt with after a finding of liability for intentional race discrimination under Section 2. It seems that the Court has already indicated that that's the approach it seems would be appropriate here. So, any discovery relating to Section 3(c) relief, bail-in relief, preclearance is premature at this stage, and the Court need not even address any such discovery issues now. But even if the Court were called upon to address the issue, it would still remain the United States' position that discovery relating to the OIG report is still irrelevant and improper because, to the extent that any discovery related to preclearance remedies under 3(c) is required, such discovery will be focused not on the OIG report, not on the Department of Justice's conduct, but, rather, on Texas's conduct related to its enactment of voting laws and whether that conduct counsels in favor of reimposing preclearance requirements on the State.

The Department of Justice's past conduct in enforcing the Voting Rights Act is simply not an issue for this Court's review in this case. And, additionally, the preclearance remedy under Section 3(c) of the Voting Rights Act does not even require Texas to submit any voting change to the Department of Justice for administrative preclearance. Texas may always choose, and subject to 3(c) relief, to submit any voting changes directly to this Court. So, that fact alone

just clarifies how irrelevant the Department of Justice's past enforcement of the Voting Rights Act is to consideration of a forward-looking remedy as in D.C., as is -- as in 3(c).

Finally, your Honor, it bears noting, as we did in our brief, that the OIG report at issue does not even support Texas's claim that the DOJ enforced the Voting Rights Act in a politicized and unconstitutional matter. No amount of selective cherry-picking on Texas's part escapes the clear conclusion of the Inspector General's report, which found no evidence of any improper racial or political consideration in connection with the Civil Rights Division's enforcement of Voting Rights Act matters over a ten-year period.

And, so, for all of these reasons, your Honor, we ask the Court to enter a protective order prohibiting this deposition of the DOJ's Office of Inspector General.

MR. DERFNER: Your Honor, this is Armand Derfner for the Veasey plaintiffs. Could I be heard for a second on this motion?

THE COURT: Yes. Yes.

MR. DERFNER: I would just say that this -- this is a case about certain statutes of Texas that Texas has responded with these answers that talk about 3(c) relief, but in terms of the case we're trying right now, putting the -- the IG's report in would send us, you know, down trails that will really divert attention from this case. I want to give you one example.

Texas says -- one of the things Texas says in defense of this statute is: Well, you know, Georgia has a statute, and that statute was precleared by the Department of Justice under Section 5. We haven't dealt with that issue. If we dive into that issue, then we'd have to get into the last IG's report that talked about the politicization of the department at the time when the Georgia statute was precleared. So, this is -- this is really doing to take us way, way in a direction that has nothing to do with getting to the heart of this case.

THE COURT: All right. Who's going to respond for the defense?

MR. CLAY: Your Honor, this is Reed Clay for State of Texas. A couple of things here. One is there is no question that that OIG report is relevant to this case. They have made 3(c) a possible remedy in this case, which deals directly with Department of Justice oversight of state election law changes. That's an equitable remedy, and it's dependent on the State's ability to get a fair shake either from a court or from DOJ. The Department of Justice's position that, well, the State can always go to a court and get it approved is -- is -- it's just not right. I mean, in order for that statute -- in order for the preclearance regime to be constitutional, congress added preclearance by administrative preclearance so that -- so that states like Texas and other covered jurisdictions didn't have to go through the long and expensive process of a lawsuit in

order to have their election changes validated. Without the possibility of administrative preclearance, the whole regime is simply -- would likely be found unconstitutional.

With respect to Mr. Derfner's claim that this would send us down rabbit trails that maybe we don't want to go down, we've been trying to get testimony and evidence in this related -- evidence related to the OIG report into evidence and into the record in this court for several months. They have at every turn tried to block it. If we had done this in the timeline that Texas had wanted to do it in, then if Mr. Derfner or his other plaintiffs had wanted to go down these other trails, then they could have. It is not Texas's fault that now, only now, are they allowing us to, you know, make it relevant to the case because of the affirmative defenses that we pled. It was relevant back when the -- when the case was filed last summer, because they pled bail-in.

That notwithstanding, your Honor, if -- if the plan is to have a remedial phase, I do think that a majority of this goes towards the remedy of 3(c). That is the real relevance of this stuff. And, so, if -- if your Honor plans to, intends to, open up discovery if a remedial phase is necessary, then I don't think the State of Texas would object to postponing his deposition until that time. But the idea that it's not relevant and not likely to lead to relevant information and admissible evidence in this case that's related to bail-in is

just incorrect.

THE COURT: All right. Court's going to --

MR. SPEAKER: (indiscernible) --

THE COURT: Hold on. Court's going to grant the motion for protective order at this time. But I also think, besides whether we get into the remedial phase or not, let's say we get there, I'm just not sure -- I mean, the report is what it is. As they said -- the plaintiff, or the Government, someone argued -- the report speaks for itself. So, I wasn't real sure about the appropriateness of a deposition as to what would be proper in terms of the request for that 30(b)(6).

MR. CLAY: All right. If I -- if I may address it now, and with the caveat that we -- you know, if we reach the remedial phase, we may, you know, have a longer discussion about this, but I think one of the main reasons that the deposition became necessary was the DOJ's refusal to agree to the Court taking judicial notice of this. They claimed it was irrelevant, and they claimed that -- and, unfortunately, I don't have the transcript in front of me, but Ms. Baldwin actually -- I believe it was Ms. Baldwin -- actually described the report as not -- you know, not standing on its own, that there were things in there that maybe were disputed and maybe we could take issue with, and so --

THE COURT: Well, and that's why my first question was, is -- is this disputed. I mean, it's a public record;

it's a public document. That's kind of where I started, and --

MR. CLAY: I think that's a very valid question.

THE COURT: -- we're kind of beyond that, but --

MR. CLAY: And we believe it is. But I think the Department of Justice has at least raised the specter that they think that it's not. And, so, I think that's why -- that's the genesis of the deposition notice.

THE COURT: All right. So, Court has granted DE 355 at this time.

The next matter is the defendants' motion to compel some of the plaintiffs' answers to interrogatories. I'm showing DE 343.

MS. WOLF: Your Honor, this is Lindsey Wolf for the defendants. We're in the process of trying to resolve that by using sworn deposition testimony, but we're not there yet because we still have depositions left, so we just ask that we sort of table that for now and keep that on but don't really address it at this point.

THE COURT: All right. Mr. Dunn or Mr. Derfner? Or who's going to speak to that for the plaintiffs?

MR. DUNN: This is Chad Dunn, your Honor, for the Veasey/LULAC plaintiffs, and I'm sorry to interrupt the flow of things, but I just want to make sure I don't inadvertently not disclose that my co-counsel is on this call to the court, so Mr. Hebert and Mr. Brazil, Ms. Simpson, Mr. Baron are also on

this call. But as to the State's proposal to deal with, interrogatory by deposition, that's fine with us. We're fine with the issue tabled.

THE COURT: All right. What about the -- I believe this also involved the plaintiffs -- the Ortiz, Lupe plaintiffs.

MR. DOGGETT: Yes, your Honor. This is Robert Doggett for the Ortiz plaintiffs, and that's acceptable to us as well.

THE COURT: Okay. Then, we're going to pass on that for now.

Then we have the Texas League of Young Voters and Clark's motion to compel the Attorney General of Texas to comply with the subpoena for documents and for testimony, and I believe this involved a Mr. Mitchell. Who's going to argue that, Mr. Haygood or Ms. Korgaonkar?

MR. DUNBAR: Your Honor, this is Charlie Dunbar. I'll be arguing --

THE COURT: Okay.

MR. DUNBAR: -- for the Texas League.

THE COURT: You can proceed.

MR. DUNBAR: Thank you, your Honor.

The issue with this motion is whether Major Forrest Mitchell, who, the Court may know, is the head of the special investigations unit within the Office of the Attorney General

that deals with voter fraud, someone who testified on behalf of the State in the Section 5 litigation and someone who the State listed on their initial Rule 26 disclosures here, should be made available to testify about topics relating to in-person voter fraud in Texas. And I think the remaining issue before the Court is narrow, but -- but very important. I understand from the responses by the -- made by the Office of Attorney General at footnote two that the defendants have committed that they will not object to the use of the trial and deposition testimony of Major Mitchell from the Section 5 litigation. And we're fine with that, your Honor. We think that will eliminate the need for a lengthy deposition that retreads ground that's already been covered.

The only question left for the Court, then, is whether Mr. Mitchell, or Major Mitchell, should be made available for a limited, targeted deposition about in-person voter fraud since the enactment of SB 14. As your -- as your Honor undoubtedly knows, SB 14 has a bit of an unusual enforcement history. It was signed by Governor Perry May 27th, 2011, but did not actually go into effect until June 27th, 2013. So, particularly in this context, for the reasons we've laid out in our papers, we think evidence about what has happened since SB 14 was enacted and what has happened since SB 14 was enforced will likely lead to the discovery of admissible evidence relating to our Section 2 claim and also relating to

our constitutional claims. And we've explained those reasons in our papers, your Honor, and if the Court has questions about them, I'd be happy to answer them.

What I would like to address here, if I may, briefly, is just why I think the approach that I -- that the Court understandably took with respect to the 30(b)(6) deposition issues with respect to the Department of Justice, that is, relying largely on documents on lieu of deposition testimony, wouldn't be a sufficient resolution of this issue. And I think there are three -- three reasons for that.

The first is that I think Major Mitchell is simply a critical witness here. He's someone who testified in Section 5, someone who's disclosed in the State's initial Rule 26 disclosures, and especially if there is a possibility that he may testify at trial, we think that we have the right to depose him, in particular on this question of post-enactment developments.

Second, throughout the course of the party -- throughout the course of the parties' discussions on this issue, we have largely agreed to stand down on our document requests to the Office of the Attorney General. In fact, the Office of the Attorney General has not produced a single document in direct response to our subpoena. We did that on the idea that we could use a deposition to hopefully get at the information -- the limited category of information we need

about post-enactment development. So, I don't think the same option of just relying on documents in lieu of deposition testimony here makes sense.

And, third, and finally, I'd just stress that I do think there is a qualitative difference between the discovery we're seeking here, which is limited information about in-person voter fraud since the enactment and since the enforcement of SB 14 in Texas, is simply qualitatively different from the discovery that Texas is seeking from the Department of Justice.

So, for those reasons, we'd ask that the Court -- for those reasons and the reasons explained in our papers, your Honor, I'd ask that the Court grant our motion to compel on the limited deposition topics and the limited document requests that we have.

THE COURT: All right. Mr. --

MR. CLAY: Your Honor, Reed Clay for the State of Texas. I would agree with Mr. Dunbar about one thing, is that there is a qualitative difference between what we're seeking from the Department of Justice and what -- and what the plaintiffs are seeking from us, and that difference is summed up by relevance.

The stuff that we are -- I don't think anybody in this case believes, other than perhaps the Department of Justice, based upon their testimony earlier -- their arguments

earlier today, that believes that voter fraud, particularly pre-enactment voter fraud, in particular, is relevant to this case. The dispute here -- and that is precisely what we're seeking from the Department of Justice, is pre-enactment voter fraud, and not limited to just in-person voter fraud. What they're asking for here is post-enactment voter fraud, which cannot possibly inform the decision of this Court with respect to the two claims that they say that it's relevant to.

First of all, they can't -- stuff that has happened since the enactment of SB 14 cannot possibly have any -- any probative value about what the purpose of the legislature was in 2011 when it enacted SB 14. Pre-enactment voter fraud evidence can.

With respect to their -- what I'll call their "*Crawford* claim," because it's essentially an invitation to this Court to overrule *Crawford*, is they -- their argument boils down to an absurdity, because what they would -- a perfectly -- suppose -- we say this in our brief. Suppose voter fraud is rampant, in-person voter fraud is rampant in Texas in 2011, or 2010. The legislature comes into session in 2011, enacts a voter I.D. bill. And then three years later the trial is still going on and evidence is produced that there -- all voter fraud has ceased and there is no more voter fraud. What they would have -- what their argument seems to be is that in that case, three years after it has been enacted, somehow

the constitutionality of that statute has changed. What was once, at least under *Crawford*, definitely constitutional when it was enacted, is no longer constitutional precisely because it has worked to eradicate voter fraud. That can't be right.

Post-enactment voter fraud simply is not relevant to either claim that they're asking for, and that's the reason that we've asked for the deposition to be quashed.

THE COURT: Okay. Anyone else going to weigh in on that?

MR. DUNBAR: Yes, Judge. Your Honor, this is Mr. Dunbar. May I respond?

THE COURT: Yes. Yes.

MR. DUNBAR: Thank you, your Honor. Just to quickly respond to Mr. Clay's point; with respect to the relevance of the Section 2 claim, I think the State mischaracterizes the nature of the Section 2 inquiry. Of course discriminatory purpose is part of the calculus, but, as the Court is aware and spelled out in your decision on the motion to dismiss, congress has specified that Section 2 should be applied according to various senate factors.

One of those expressed senate factors is whether the policy justification the State has for voting restriction is, quote-unquote, "tenuous." We think that evidence of what happened after SB 14 -- evidence of what happened after SB 14 was enacted but before it was enforced, as well as evidence of

what happened after SB 14 was actually enforced, is directly relevant to whether the State has legitimate policy justification for deciding that in-person voter fraud was a problem in Texas and whether photo I.D. was a reasonable means of accomplishing the State's stated objectives. So, wholly aside from intent or purpose, we believe that the post-enactment evidence is directly relevant.

With respect to our, quote-unquote, "*Crawford* claim," which deals with the question of whether the State has a legitimate interest in restricting the franchise of potentially hundreds of thousands of voters in Texas, we do think that evidence of whether voting fraud -- in-person voting fraud remained a problem in Texas after SB 14, increased in Texas after the enactment of SB 14, or increased or decreased between the time that SB 14 was enacted and it was actually in force, is relevant to the reasonableness of the State's purported interest in enacting and enforcing SB 14.

In fact, if -- if voter -- if in-person voter fraud just skyrocketed after SB 14 had been enacted but before it was enforced, I'm sure you would hear the State taking a different position. And part of the reason why we need this discovery is not simply for offensive purposes, but for defensive purpose. The State could very well intend to show at trial, using documents or the testimony of other witnesses, that in-person voter fraud actually remained a problem after SB 14 was enacted

but before it was enforced, and we need to be able to have testimony from Major Mitchell, the State's institutional warehouse of knowledge about in-person voter fraud, to be able to prepare to rebut that type of testimony.

Thank you.

MR. CLAY: Your Honor, with respect to Mr. Dunbar's last point, we have offered to stipulate that we will not call Major Mitchell to testify with respect to anything that has happened after SB 14. That has been refused. So, the concern that somehow we're going to spring post-enactment voter fraud on them at the trial by using testimony from Mr. Mitchell is just -- is not right. I mean, we do not plan to do that.

MR. DUNBAR: And, your Honor, just a quick point on that. Even -- even Mr. Clay's proposed situation I think suggests a problem, which is that they're only willing to say that Major Mitchell won't testify about post-enactment voter fraud elements, which says nothing about whether other documents or other witness testimony might very well venture into that area, which is, again, not to repeat myself, the reason why I think we need this deposition to have a complete evidentiary record for this case.

MR. CLAY: Your Honor, the stipulation we proposed would apply to anyone within the Attorney General's office, who is the only one from the State who is able to investigate and prosecute voter fraud.

MR. DUNN: Your Honor, this is Chad Dunn on behalf of the Veasey/LULAC plaintiffs. I think Mr. Dunbar has ably stated our position, but there is just one sort of area I'd like to seek out in relation to the deposition of Mr. Mitchell. But what could be going on here -- which there is no way for us to know without getting the deposition -- but what could be going on here is that post-enactment and enforcement of Senate Bill 14 there haven't been any discovered incidents of in-person voter fraud; there haven't been any incidents where SB 14 will serve the purported purpose the State advances in this case. And I could understand where the State wouldn't want to then avail themselves of Mr. Mitchell's testimony in that regard, because it wouldn't be helpful to their positions in the case. It could be terribly helpful to the plaintiffs' positions in the case. And, of course, I'm not making these allegations, because without the deposition I don't know the answers. And that's why we think, the plaintiffs think, it's terribly important that we get Mr. Mitchell's testimony. When Mr. Mitchell's testimony advanced the State's interest in the Section 5 case, he was front and center and there was no argument about his relevancy. When the testimony may now damage the State's case, all of a sudden it's -- you know, Mr. Mitchell (indiscernible) concern. So --

THE COURT: All right.

MR. DUNN: The question, again, is discoverable -- of

potentially admissible evidence, and that's -- that's where we're headed.

THE COURT: Yeah, the Court -- Court's going to grant that motion to compel.

MR. CLAY: Your Honor, will it be limited in the same respects that our requests to the Department of Justice were limited? I mean, in particular, the method in which we compile, record these things, and just the numbers of incidents of voter fraud? Or are they going to be able to inquire into the case, into the substance of these cases?

THE COURT: Okay. Let me just see where we are. So, you all aren't going to get into what he's already testified to. It's my understanding when the -- I believe it was Mr. Dunbar said that the plaintiffs have not yet received documents regarding this issue, the post-enactment matters. Is that correct, or not? Mr. Dunbar?

MR. DUNBAR: That's correct, your Honor. We have not -- the OAG has not directly produced any documents responsive to our subpoena.

THE COURT: So, I'm assuming that's going to be done through the deposition?

MR. CLAY: That's right, your Honor.

THE COURT: Okay. So, I guess Mr. -- Mr. Clay is wanting to limit the questioning, and, Mr. Dunbar, do you want to respond to that?

MR. DUNBAR: Yes, your Honor. I think that the -- the three reasons I think I highlighted at the outset of why the approach the Court, understandably, took with respect to the Department of Justice simply won't work here, in part because we don't -- we don't -- one of the reasons we highlighted is we don't have any documentary evidence to talk about during the deposition. During -- Mr. Clay and I have been back and forth over the months in our attempts to meet and confer about this. We agreed to a general approach, that we would use the deposition largely in lieu of document production to get the information that we thought we need, subject to a few discrete categories of documents the Office of the Attorney General would produce. So, I think it would be -- I actually don't think it would accomplish any of the ends that we've been -- we've been talking about to simply limit the deposition to the method by which records are kept in -- kept and collected, even though we don't -- we don't have any of those.

MR. CLAY: Well, your Honor, and I'm not -- I'm actually not suggesting we limit it quite that much. If we're going to have testimony on and document production on post-enactment voter fraud, which it sounds like we are, I think it's legitimate for the other side to understand the universe of incidents or allegations of voter fraud. What we're concerned about, and I think what the Department of Justice was at least partly correct in being worried about, is divulging

any sort of law enforcement privilege stuff. We just don't want to get into the substance of these cases.

THE COURT: Right. And I think there was some -- in the motions I read or the response, they were not seeking to get into anything that's currently pending, correct? Mr. Dunbar?

MR. DUNBAR: Your Honor, this is Kelly Dunbar. That's -- that's correct. We made -- we made clear to the State from the beginning that we have no interest in piercing any privilege associated with ongoing investigations. And I think in terms of the scope of what you're ordering, I think -- I believe Exhibit 4 to our motion lays out the list of topics for which previously OAG had designated Mr. Mitchell to testify, and I've laid this out in some detail in an e-mail to Mr. Scott and Mr. Clay. That was largely an agreed-upon approach, subject to our disagreement about post-enactment, pre-enactment. Now that the Court has resolved that, I think that Exhibit 4 should -- should serve as a template for -- for the topics of what would be discussed at the deposition.

THE COURT: Mr. Clay?

MR. CLAY: I think we're -- it's a good start that we're not going to have testimony about pending cases. But that doesn't fully solve the problem that I'm trying to address here. And, again, I don't want to interfere. If we're going to have testimony on post-enactment voter fraud, I don't want

to interfere with his ability to get a full universe of the incidents and allegations of voter fraud. But even in past cases, the divulging of substantive investigatory tactics or prosecutorial methods that were used in that case can be very damaging to the Attorney General's office to not only enforce and investigate voter fraud, but all other types of crimes. And, so, I just want to make sure that, even with respect to cases that are now closed, we aren't getting into the substance of the cases, but still giving them the ability to understand what has -- in terms of numbers, in terms of the universe of what has happened since 2011 or '12.

THE COURT: All right. Mr. Dunbar, I tend to agree with that. What are your comments?

MR. DUNBAR: My only comment, your Honor, is that we have no intent of piercing any legitimate privilege course without knowing the scope of the privilege that the State may assert; it's difficult to address the abstract. My suggestion, respectfully, would be that if the Court grants the motion to compel along the terms as we outlined in our fourth exhibit, to the extent the OAG feels that any of our questions of Mr. Mitchell veer into privileged territory, they're perfectly entitled to make those objections and we'll respect -- respect those objections assuming that there is, you know, a predicate laid for the invocation of the privilege. But, as I think I stated at the outset, we have no intention of wanting to pierce

any legitimate law enforcement privilege.

THE COURT: Okay. It kind of sounds like we're on the same page, and that -- that can just be addressed through objections at the deposition.

MR. CLAY: So long as Mr. Dunbar is okay with us instructing him not to answer at the deposition.

THE COURT: I'm okay with it, so --

MR. CLAY: Thank you. That's -- that's even better.

MR. SCOTT: And, your Honor, not to trying to open that previously closed box --

THE COURT: Okay.

MR. SCOTT: -- related to the DOJ's issues --

THE COURT: Yes.

MR. SCOTT: -- but, so we will be able to understand the universe of all claims up to today, what -- that universe of investigations that they have had going on with regard to voter fraud as well.

THE COURT: Yes.

MR. SCOTT: Thank you.

THE COURT: All right. I think there is one more -- if we're -- if we're finished on that, one more matter, which was the plaintiffs', the Veasey/LULAC plaintiffs' motion to compel the interrogatory responses. That was just filed on Friday. I don't know if you all have had a chance to confer on that issue regarding --

MR. DERFNER: Your Honor, this is Armand Derfner. Can you hear me?

THE COURT: Yes.

MR. DERFNER: Thank you, because I'm not always sure if my mute is on or not. I think we have an agreement on that. I think we have an agreement on that. There were nine interrogatories at issue. The agreement is that the plaintiffs will withdraw two of them and the defendants will respond to the other seven within 10 days from now. So, I would say -- ask the Court to just table that motion, and, presumably, we hope it will go away.

THE COURT: All right. Is that correct?

MR. SCOTT: That's correct, your Honor.

THE COURT: Now, it's my understanding there were some non-party motions pending that the parties were not going to proceed on today. Is that right?

MR. SCOTT: Your Honor, there were two. There were motions to -- there were motions to quash subpoenas that were filed by various groups of legislators. One group is a set of senators; the other motion to quash was filed by a group of representatives. I think Mr. Talbot is the lawyer on behalf of the house of representative members, and they have filed a motion to quash; Ms. Alice London is representing the senators. It is my understanding that both of those -- Mr. Talbot called me yesterday and wanted those taken off of the docket for

today, and I agreed to that -- or Tuesday, I'm sorry -- and asked if it was okay to put them on the Court's submission and just have the Court rule on them by the submissions of the parties. He has subsequently said that the senate is not -- Ms. London is not comfortable with that. She's out of the country currently --

THE COURT: Okay.

MR. SCOTT: -- and would like, I think, to have her voice heard on those issues. He is still comfortable with that issue of having the house of representatives' motion to quash on those subpoenas served upon those representatives decided on the pleadings --

THE COURT: Okay.

MR. SCOTT: -- I mean decided on the submissions.

THE COURT: We'll just confirm. I'll have Brandy reach out to -- to both of them just -- just to be sure.

So, the last -- I believe the last matter pending, then, was regarding the advisory that was filed by the defendants yesterday or the day before, and there were some responses filed yesterday.

MR. SCOTT: Yes, ma'am. And, so, on the 22nd, almost about noon, I learned that there were a number of records which were not afforded over back in January as a result of a data processing error that excluded the -- attempted to comply with the request on drawing the status out, but in order to get an

accurate picture of the status, there was a qualifier placed in; that qualifier excluded a fairly significant amount of records. We then reached out; we notified the Court on that same day and notified all of the other parties. We were notified yesterday by the Department of Justice how they wanted those records. We delivered those records to the Department of Justice yesterday.

THE COURT: Okay.

MR. SCOTT: And that is where we find ourselves today. We believe that there will be a significant number of individuals on the plaintiffs' no-match list that they will find are on that list. And that was one of the -- the reasons that we ended up doing a little more of a due diligence to find out this can't be right; there can't be this many people that have licenses. Even though it sounded like it was going to be a great cross.

THE COURT: Okay.

MR. SCOTT: So, that's -- that's where we are. We found out about it two days ago; we reached out to them to see how to rectify it; and we have gotten them that information on the same day that they requested it in the form that they requested it.

THE COURT: All right. Ms. Baldwin?

MS. BALDWIN: Your Honor? Yes, thank you, your Honor. As Mr. Scott reflected, the data that was produced many

months ago and which was represented to us as complete at the time regarding who the holders are of various State-issued forms of SB 14 I.D., drivers' licenses and I.D.'s, defendants have represented at this eleventh hour is now incomplete. We have requested the data. They did turn over a file yesterday. That file hasn't yet made its way to D.C. We will be reviewing that file as soon as it's here. It -- this is -- does raise serious issues. We've let the defendants know that we will likely seek an expedited deposition next week of one or more representatives of DPS once we're able to review the data. At this point, until we understand ourselves, to be able to see the data and understand through some discovery exactly what these records are, why they weren't produced initially, why they're being produced now, we're not in a position to entirely know what the ramifications will be. We are absolutely working as hard as we can to figure that out and to preserve this Court's trial date.

So, what I would suggest at this point is that, you know, we will do our work; this will affect the -- many of the expert reports that we've already submitted, but once we've been able to review the data and have a deposition next week, we would ask the Court to go ahead and schedule another hearing to see if there is any further adjustment or relief that needs to be taken; if the Court has time, for example, on Thursday, to just put that on the calendar to make sure that if there are

any other issues that need to be addressed we're able to do so.

THE COURT: Right. Is anyone going to make any comments on that at this time?

MR. DUNN: Your Honor, this is Chad Dunn on behalf of the Veasey/LULAC plaintiffs. And we -- we, obviously, take Mr. Scott and the lawyers for the State at their word that this was inadvertent, but it's, nevertheless, incredibly impactful to the case at this point. And we agree with what Ms. Baldwin has said, and, of course, we're even at a further disadvantage because the United States got the data but not the individual plaintiffs; the United States will need to look at it to determine what needs to be done with it and what can be outputted or provided in the confines of this Court's protective order; and then we, the Veasey/LULAC plaintiffs, have an expert, and I noticed the other private plaintiffs have an expert, who have spent considerable amounts of time working on this data to come up with their expert reports, which were, as you know, provided (indiscernible) weeks ago.

So, there's a number of concerns that were raised now, and maybe it's the case none of them can be resolved today, but I still think they ought to be under the Court's radar; the first of which is that even if the inadvertent failure to produce (indiscernible) records was, in fact, inadvertent, it, nevertheless, could have the effect of providing the State an advantage, and we certainly don't think

the State should come out with an advantage from this error. We definitely -- obviously, this -- this shouldn't strike the Court as any surprise, but at least as far as my client, his primary concern is that this doesn't somehow alter the trial date. As we know, in the most recent hearings the Court's held, the State was asking for the -- you know, for the trial to be moved. So, we don't think this issue ought to result in the trial moving, and we don't think this issue ought to change the deadline by which the State needs to submit its expert analysis.

The State's already now had the advantage of potentially seeing all of our work product and our expert's work product and, as Mr. Scott seems to have recognized today, worked backwards from it in a way to try to undermine it. And, of course, I don't fault them for that; that's what any defense counsel would do in a case of this nature, but, in so doing, now wants to alter the fundamental data that this database match process was going to be held under. And that -- that could potentially, once we see this data, be something that we object to. It could also be something we're ready to deal with and work through. But if we deal with it and work through it, there is going to be, at least for my clients, an economic impact. You know, we have budgeted and spent a great deal of money on the analysis that we did, and we're essentially going to have to redo one of them and a portion of another. And

that's going to cost us money that, frankly, we don't have in the budget for, because we relied upon the State's representation that they fully produced this record.

So, (indiscernible) -- you know, we just learned about this a little more than 24 hours ago. Perhaps we could confer with the State and reach an agreement to offset our costs on having to essentially re-perform analysis through no fault of our own. But those are the issues we want to make sure is on the Court's radar.

THE COURT: All right. We're just going to see where -- where we end up. Once the plaintiffs have a chance to review those records, see where we are, you all can certainly confer further. I can give you a hearing date for Thursday. I may have to move that to Friday or bump it up or down, just kind of depending, but if you all want to go ahead and set something just so that we have a hearing set, I may have to bump it around a little bit next week. But -- Brandy, do you want to give them just a hearing date so we can reconvene?

THE CLERK: August 31st at 10:00 a.m.?

THE COURT: Okay?

MR. DONNELL: Pardon me, your Honor. This is Ben Donnell. What time did she say?

THE COURT: Ten a.m. August 31st --

MR. DONNELL: Ten a.m. on -- on the thirty -- on Thursday?

THE COURT: On Thursday, subject to --

(Voices and whispers off the record)

MR. DONNELL: To your schedule?

THE COURT: I'm sorry; July 31st. Well, you know, we could wait till August 31st.

(Laughter)

But -- so --

MR. DONNELL: Wishful thinking, Judge.

THE COURT: -- Thursday. One week. We'll just carry everything to the trial and deal with it all. No.

(Laughter)

No. We are reconvening July 31st, Thursday, at 10:00 a.m. I, you know, am going to let you know in advance I may have to bump that around a little bit, but we will see what -- where we are.

So, is there anything else to address? How are the depositions going?

MR. ROSENBERG: Your Honor, Ezra Rosenberg on behalf of Texas NAACP. One quick issue. The scheduling order made no provision for transcript designations. I have spoken with the State and with DOJ. I have a proposal. I don't know if -- we've not heard back from the State on it, but it would be to have transcript designations submitted concurrently with the findings of fact on August 18th, and counter designations and objections on August 25th, and then objections to counter

designations on August 27th, which is the date of the pretrial.

MR. SCOTT: And, your Honor, I apologize to Mr. Rosenberg, wherever you are. I -- we have been kind of busy the last couple days since I got his proposal. We'll look at that and be in a position to have already agreed to that or worked out any details before our next hearing.

THE COURT: Okay. So, you all are going to --

MR. ROSENBERG: Thank you.

THE COURT: -- confer further on that --

MR. SPEAKER: Yes.

THE COURT: -- but it sounds like you all can come to an agreement.

MR. SPEAKER: Absolutely.

THE COURT: Any other matters? Is there still a lot of depositions set? Or --

MR. SCOTT: They were going at 8:00 o'clock last night, I think was when we left last night, and I think we've got at least three or four scheduled most days, so it's full employment for most.

THE COURT: Okay. Anything on trial or anything else to address from anybody?

(No audible response)

Doesn't sound like it, so we will just reconvene on Thursday unless you hear otherwise. Thank you. You're excused.

MR. SPEAKER: Thank you.

MR. SPEAKER: Thank you, Judge.

MR. SPEAKER: Thank you.

(Proceeding was adjourned at 10:19 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

July 25, 2014

TONI HUDSON, TRANSCRIBER